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AZ CORP COMMISSION
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Arizona Corporation Commission

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9 **JAMES M. IRVIN**
10 **Commissioner**

JAN 08 2002

11 **MARC SPITZER**
12 **Commissioner**

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13
14 **IN THE MATTER OF U S WEST**
15 **COMMUNICATIONS, INC.'S**
16 **COMPLIANCE WITH § 271 OF THE**
17 **TELECOMMUNICATIONS ACT OF**
18 **1996**

Docket No. T-00000A-97-0238

19 **RESPONSE OF WORLDCOM, INC. TO STAFF'S FINAL REPORT**
20 **ON QWEST'S PERFORMANCE ASSURANCE PLAN**

21 WorldCom, Inc., on behalf of its regulated subsidiaries, ("WorldCom") submits this
22 timely response to Staff's Final Report on Qwest's Performance Assurance Plan ("PAP")
23 filed with the Commission on December 24, 2001.¹ WorldCom appreciates Staff's efforts

25
26 ¹ The parties have agreed that responses to Staff's report are due January 8, 2002, since Staff's report was not e-mailed to the parties.

1 in fashioning a PAP for Arizona. WorldCom also supports Staff's efforts to limit the
2 critical value of the z-score to 2.0 for sample sizes of 151 and above as a step in the right
3 direction. WorldCom also recognizes that the Staff has adopted some of WorldCom's
4 requests, but that the basic PAP is still very similar to that which Qwest proposed and
5 agreed to in these proceedings on July 3, 2001. WorldCom will not repeat its many
6 arguments here that have been made in various pleadings and workshops, but incorporates
7 those arguments by reference, particularly those arguments that demonstrate what other
8 Qwest states are considering, such as the decisions issued by the Colorado Hearings
9 Commissioner and recommendations made by the Utah Division of Public Utilities that
10 were discussed in WorldCom's last round of comments filed on November 8, 2001.
11 WorldCom will address several issues briefly to provide some additional information.

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15 **A. Escalation of penalties beyond six months**

16 Staff's final report proposes that the escalation of payments be capped at the six-
17 month level. That is a minority position given the Hearing Commissioner's decisions in
18 Colorado and the Utah, New Mexico and Washington staffs' recommendations in the
19 respective PAP proceedings pending in those states. As was stated by the Colorado
20 Hearings Commissioner:

21
22 Qwest's argument to freeze escalated penalties makes no logical sense. It bases its
23 argument on the simple fact that the escalated payment would potentially 'dwarf'
24 the cost of the service in question. This argument misses the point that payment
25 escalations are meant to be a balance between compensating the CLECs for their
26 losses and ensuring that the penalty is higher than the amount Qwest is willing to
absorb as a cost of doing business. Since the value to Qwest of suppressing
competition in a particular market may 'dwarf' the cost of the relevant services they

1 should be selling, sometimes the escalation may have to be significant to motivate
2 Qwest to perform. Although the idea that Qwest would rationally evaluate whether
3 it is more valuable to absorb penalties is still purely speculative, one of the
4 underpinnings of this performance plan is to ensure that this type of strategic action
5 is deterred. Continuous escalation of payments for continued poor performance
6 should help prevent this strategic activity.²

7 Moreover the Utah Staff stated the following on this issue:

8 First, it may not be self-evidently clear that continuation of poor performance in the
9 past six months means that there was a methodical calculation by Qwest that the
10 continuing costs of compliance exceeded the continuing costs of violation.
11 However, it is abundantly clear that a significant problem of either economic
12 incentive or technical difficulty must exist. Since all of the measures involved in
13 the proposed QPAP are derivative to the ongoing ROC-OSS testing effort, it is
14 clear that Qwest should be able to meet all of them. Because the ROC-OSS testing
15 is "military style," Qwest will have already demonstrated its ability to meet each
16 one of the measures prior to any application for interLATA relief. Further, there is
17 certainly a common belief and expectation that Qwest can meet all of these
18 measures; otherwise, it is difficult to see why Qwest would have agreed to them.
19 Qwest, in effect, is arguing that the inability to meet a performance standard
20 problem after six months translates into the belief that the standard is practically
21 meetable. However, as noted above, the assumed successful completion of the
22 ROC-OSS tests erases validity for this line of argument.³

23 In the last workshop held December 13, 2001, Qwest presented its blue sheets,
24 Exhibit Qwest 5-7, demonstrating its compliance with the various performance indicator
25 definitions ("PIDs"). That exhibit speaks for itself, but it is clear that Qwest is touting its
26 performance as meeting checklist requirements in the data reconciliation workshop, and
then states that it may not be able to meet certain PIDs. Qwest's exhibit demonstrates its

² See, Decision No. R01-997-I issued on September 26, 2001, in Docket No. 01I-041T, entitled: In the Matter of the Investigation into Alternative Approaches for a Qwest Corporation Performance Assurance Plan in Colorado, at pages 59 and 60, affirmed by Decision No. R01-1142-1 issued in the same docket on November 5, 2001, at pages 22 and 23.

1 belief that its performance is generally in the "bright blue" category entitled "Clearly
2 Satisfies Checklist." It must be remembered that pursuant to various Commission orders
3 on Qwest's compliance with the various 14-point checklist items, the compliance finding
4 for many checklist items is dependent on meeting PID requirements. Qwest should not
5 have it both ways -be found to be in compliance for one purpose, entering the long
6 distance market, yet claim escalation payments beyond six months is inappropriate. If
7 Qwest is in compliance, Qwest should not miss a PID for several months, let alone six
8 months and should never have to pay the higher penalties it fears.
9
10

11 In addition, the New Mexico Public Regulation Advocacy Staff also opposes a
12 limitation on the escalation of penalties.⁴ Finally, the Washington Public Counsel has
13 recommended to the Washington Transportation and Utilities Commission that it adopt the
14 decision of the Colorado Hearings Commissioner concerning the PAP in general, and by
15 definition, the Colorado Hearings Commissioner's opposition to a cap on the six-month
16 escalation proposal.⁵
17

18 **B. Commission control of changes to PAP**
19

20 WorldCom again appreciates the Staff's recognition that Qwest should not
21 have a veto power over changes to the PAP as stated in paragraph 270 of its report.
22 Qwest opposes staff's proposal. There are no other performance assurance plans
23

24 ³ See, Report of Division of Public Utilities on QPAP, issued October 26, 2001, at page
47.

25 ⁴ See, Staff Comments on Report on QPAP and Request for Oral Argument, filed in Utility
Case No. 3269, dated November 2, 2001, at pages 16 through 18.
26

1 that allow Qwest a veto power over changes, since it is not sound public policy to
2 completely remove a Commission from QPAP change management. The
3 Commission regulates Qwest. Qwest and this Commission are not equals. The
4 Commission is not negotiating with Qwest to reach an appropriate SGAT or CPAP.
5 Rather, Qwest has placed these documents before the Commission to demonstrate
6 that it has complied with the Section 271 checklist and the public interest
7 requirements of the federal Act.
8

9
10 Consistent with its role as a regulatory body, this Commission must retain its
11 authority under both state and federal law to order changes to the CPAP as it deems
12 appropriate, and must not allow its powers to be reduced or diminished, as
13 proposed by Qwest, to be a mute bystander. Certainly the Commission has the
14 discretion to decide whether it will exercise the authority it has, but it is certainly
15 not appropriate to cede that authority as Qwest argues.
16

17 As noted above, Qwest has sought to take away significant ability for the
18 Commission to administer the plan to assure "whether Qwest would continue to satisfy the
19 requirements of Section 271 after entering the long distance market." That sort of
20 mandate, without Commission input during the review process, would not assure
21 compliance with the key FCC test, that the "BOC would continue to satisfy the
22 requirements of Section 271 after entering the long distance market." If Qwest's
23
24

25
26 ⁵ See, Public Counsel's Comments on the QPAP Report, WUTC Docket No., UT-003022
and UT 003040, dated November 20, 2001, at pages 2, 3 and 17.

1 performance is below the standards determined relevant for Section 271 purposes and
2 there is a flaw in the plan, under the Qwest proposal, the Commission could do nothing
3 and that flaw could not be changed. This does not meet the FCC test and goes against
4 FCC mandate of a state commission controlled plan.
5

6 Qwest has cited other plans to support its position that Qwest control the CPAP and
7 any changes to it, including plans from Texas, Kansas, Oklahoma, Arkansas and Missouri.
8 No other plan allows the ILEC control over the performance assurance plan as Qwest
9 suggests. The language is clear in those plans: the parties would agree to any changes "to
10 existing performance measures and this remedy plan." New measures and their
11 appropriate classification would be addressed in arbitration in front of the relevant
12 commission. Qwest effectively wants to place the Commission in the role of a party to an
13 arbitration, not the regulator that has a duty to ensure Qwest would continue to satisfy the
14 requirements of Section 271 once it has been authorized to enter the long distance market.
15 Finally, the FCC decisions addressing the Texas, Kansas, Oklahoma, Arkansas and
16 Missouri Commissions' recommendations regarding Section 271 approval does not
17 exclude a Commission from changing the performance assurance plan.
18
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20

21 **C. Inclusion of OP-17, MR-11 and MR-12**

22 Measures OP-17, Timeliness of Disconnects associated with LNP Orders MR-11,
23 LNP Trouble Reports Cleared within 24 Hours and MR-12, LNP Trouble Reports – Mean
24 Time to Restore were developed after the Final Arizona PAP workshops. In the Multi-
25 State QPAP hearings, Michael Williams of Qwest stated in his presentation on page 2 that
26

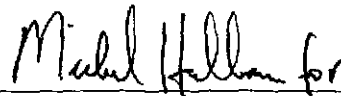
1 "Now that the benchmark is resolved, Qwest will include OP-17, MR-11, and MR-12 in
2 QPAP in Tier 1 High and Tier 2 Medium." It is WorldCom's understanding that what
3 parties agreed upon in the ROC and the multi-state process would also apply in Arizona as
4 well and that these three measures should be included in the Arizona PAP.
5

6 CONCLUSION

7 WorldCom has only addressed three issues in these comments to Staff's Final
8 Report. While WorldCom has not abandoned its earlier arguments in these proceedings,
9 these three issues should be resolved as proposed by WorldCom here. Accordingly,
10 WorldCom requests that Qwest's PAP be modified accordingly.
11

12 RESPECTFULLY submitted this 8th day of January, 2002.

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